

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILMINGTON TRUST, NATIONAL ASSOCIATION,
AS TRUSTEE FOR THE REGISTERED HOLDERS OF
WELLS FARGO COMMERCIAL MORTGAGE
TRUST 2015-NXS2, COMMERCIAL MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2015-
NXS2, acting by and through Rialto Capital Advisors,
LLC, as Special Servicer under the Pooling and Servicing
Agreement dated as of July 1, 2015,

Plaintiff,

v.

WINTA ASSET MANAGEMENT LLC; NEW YORK
CITY DEPARTMENT OF FINANCE; and SHUIGUN
CHEN,

Defendants.

Civil Action File No.
20-cv-05309-JGK-VF

**[PROPOSED] ORDER OF
ATTACHMENT AND
PRELIMINARY INJUNCTION**

**TO THE SHERIFF OF ANY COUNTY OF THE STATE OF NEW YORK OR OF THE
CITY OF NEW YORK AND THE CITY OF GREAT NECK AND TO THE UNITED
STATES MARSHALS FOR EACH OF THE DISTRICTS OF NEW YORK:**

WHEREAS, by motion, brought on by *ex parte* order to show cause, Plaintiff Wilmington Trust, National Association, as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Trust 2015-NXS2, Commercial Mortgage Pass-Through Certificates, Series 2015-NXS2, acting by and through Rialto Capital Advisors, LLC (“Plaintiff”) sought, inter alia, : (1) pursuant to Rule 64 of the Federal Rules of Civil Procedure and New York Civil Practice Law and Rules (“CPLR”) §§ 6201 and 6212, an Order of Attachment upon notice in the total amount of \$26,472,664.46 against the property of Defendant Shuigun Chen (“Guarantor”) owned or beneficially owned in New York, ^{specifically} including but not limited to, the real properties located at: (i) 5 Beech Drive, Great Neck, New York 11024 (the “Great Neck Property”); and (ii) 10 Little West Street #PH1C, New York, New York 10004 (the “Little West Penthouse”, together with the Great

Neck Property, the “Real Properties”), to serve as security: (a) pending the resolution of Plaintiff’s pending motion for final judgment and foreclosure and sale (ECF No. 147) alleging the amount due as of February 6, 2023 is \$26,472,664.46; and (b) for Plaintiff’s ability to collect on the anticipated deficiency pending the foreclosure on a commercial mortgage on the property located at 70 Broad Street, New York, New York 10004; and (2) pursuant to Fed. R. Civ. P 65 and CPLR § 6210, a Preliminary Injunction enjoining Guarantor and defendant Winta Asset Management (“Borrower,” and together, “Defendants”) from disposing of, processing, routing, facilitating, selling, transferring, encumbering, removing, paying over, conveying or otherwise interfering with Defendants’ property located in the state of New York, including, but not limited to, the Real Properties or any proceeds derived therefrom (ECF Nos. 166-168) (the “Motion”); and

WHEREAS, by Order to Show Cause for Pre-Judgment Order of Attachment and *ex parte* Temporary Restraining Order, signed by this Court on May 11, 2023 (“the Show Cause Order”; ECF No. 158), and served on Defendants on May 11, 2023, providing notice of a hearing to be held on May 25, 2023 and requiring Plaintiff to post an undertaking in the amount of \$50,000, which has been posted; and

WHEREAS, oral argument on the Motion was held on May 25, 2023; and

WHEREAS, as set forth in the Court’s oral ruling during the June 6, 2023 hearing (ECF No. 177), it appears to the Court’s satisfaction that:

- (a) Plaintiff has already prevailed on its cause of action for Mortgage Foreclosure alleged in its First Amended Complaint (ECF No. 57 at 4-14)), as set forth in the Court’s Memorandum Opinion and Order, dated July 8, 2022 (ECF No. 136) (the “SJ Opinion”), granting Plaintiff summary judgment on this cause of action; and

- (b) the grounds for attachment set forth in CPLR § 6201 exists in favor of Plaintiffs and against Defendants, in that Guarantor is a nondomiciliary residing in China (CPLR § 6201(1)) and that Defendants, with fraudulent intent, have taken actions to frustrate the enforcement of the final judgment and foreclosure and sale and the collection on the anticipated deficiency (CPLR § 6201(3));
- (c) the amount demanded by the Plaintiff exceeds all known counterclaims;
- (d) Plaintiff has shown a likelihood of success on the merits of its claims: (i) with respect to the Mortgage Foreclosure claim, by virtue of the SJ Opinion granting summary judgment on this claim; and (ii) its claim for breach of a Guaranty (ECF No. 15-16);
- (e) Plaintiff has demonstrated that it will suffer irreparable harm absent a Preliminary Injunction;
- (f) the balance of the equities favors the Plaintiff; and
- (g) the public interest weighs in favor of granting the Preliminary Injunction;

it is hereby

ORDERED, that, pursuant to Fed. R. Civ. P. 64 and 65 and CPLR §§ 6201, 6210 and 6212, the Motion is GRANTED; and it is further

266 **ORDERED**, that an Order of Attachment is GRANTED against ~~the property of Guarantor located in the State of New York, including, but not limited to,~~ the Real Properties; and it is further

ORDERED, that the Preliminary Injunction is GRANTED enjoining Defendants from disposing of, processing, routing, facilitating, selling, transferring, encumbering, removing, paying over, conveying or otherwise interfering with Defendants' property located in the state of New

York, including, but not limited to, the Real Properties or any proceeds derived therefrom; and it is further

ORDERED, the amount to be secured by the Order of Attachment, which includes interest, costs of this action, and Sheriff's fees and expenses shall be for a total sum of \$14,672,464.46; and it is further

ORDERED, that the undertaking posted by Plaintiff in the amount of \$50,000 in order to secure the Show Cause Order is sufficient to serve as security for costs and damages, including reasonable attorneys' fees, that ~~Defendants~~ ^{the Guarantor} may sustain because of the attachment if ~~Defendants~~ ^{Guarantor} recover [§] judgment or it is finally decided that Plaintiff was not entitled to an attachment of ~~Defendants'~~ ^{the Guarantor's} property, and no additional undertaking is warranted; and it is further

ORDERED, that, pursuant to CPLR § 6216, the Sheriff of the City of New York, or the sheriff of any County of the State of New York, file a notice of the Order of Attachment with the Clerks of the Counties in which the Great Neck Property and the Little West Penthouse are located, setting forth the name and address of the Plaintiff's attorneys, names the parties to the action, states the amount specified in the Order of Attachment, and describes the Great Neck Property and the Little West Penthouse, and that the Sheriff proceed herein in the manner and make his return within the time prescribed by law; and it is further

ORDERED, that, within five (5) days of entry of this Order, Plaintiff shall serve a copy of this Order of Attachment and Preliminary Injunction upon Borrower, Guarantor, Gui Xin Hong, Caihong Chen, Caiyun Chen and Mingsen Chen as follows:

(a)(1) to Borrower and Guarantor by serving their counsel of record Foster Garvey P.C.

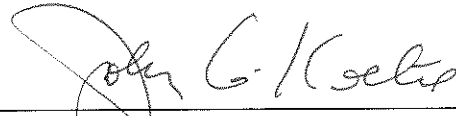
by e-mail addressed to: maurice.heller@foster.com and dan.youngblut@foster.com;

(a)(2) to Guarantor by serving his counsel of record: westerman Ball Ederer Miller Fuchs & Sharfstein, LLP by e-mail addressed to: jmiller@westermanllp.com and tgardella@westermanllp.com;

- (b) to Gui Xin Hong, by overnight courier to: (i) 5 Beech Drive, Great Neck, New York 11024; and (ii) 10 Little West Street #PH1C, New York, New York 10004;
- (c) to Caihong Chen, by overnight courier to: (i) 5 Beech Drive, Great Neck, New York 11024; (ii) 88-18 107th Avenue, Ozone Park, New York 11417; and (iii) 70 Battery Place, New York, New York 10280;
- (d) to Caiyun Chen, by overnight courier to: (i) 5 Beech Drive, Great Neck, New York 11024; and (ii) 10 Little West Street #PH1C, New York, New York 10004; and
- (e) to Mingsen Chen, by overnight courier to 10 Little West Street #PH1C, New York, New York 10004.

Dated: New York, New York
7/5, 2023

SO ORDERED



HON. JOHN G. KOELTL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK